

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**KEVIN WEBB, individually and
as representative of the Estate of
ROBERT ALLEN WEBB, et al.**

Plaintiff

VS.

BRAD LIVINGSTON, et al.
Defendants

Civil Action No. 6:13cv711

CONSOLIDATED ACTIONS

**ASHLEY ADAMS, individually and as the as
representative of the Estate of RODNEY
GERALD ADAMS, and WANDA ADAMS,
individually, et al.**

Plaintiffs

VS.

BRAD LIVINGSTON, et al.
Defendants

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Civil Action No. 6:13cv712

**GWEN TOGONIDZE, as the next friend
of J.T., a minor child and heir-at-law to
the ESTATE OF ALEXANDER
TOGONIDZE,**

Plaintiff

VS.

BRAD LIVINGSTON, et al.
Defendants

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Civil Action No. 6:14cv93

**ORDER OF CONSOLIDATION AND SETTING
OF JOINT SCHEDULING CONFERENCE**

The Report and Recommendation issued on December 2, 2013, in *Webb v. Livingston*, 6:13cv711, was adopted in part on March 17, 2014, and the parties were directed to meet and confer and file a recommendation on the issue of consolidation of heat-related cases before this District. On March 24, 2014, the parties filed a Joint Recommendation Regarding Consolidation of Heat-Related Cases and Request for Status Conference.

In the Joint Recommendation, the parties agreed that the Eastern District cases should be consolidated for the purposes of discovery and scheduling. The parties disagree at this juncture regarding whether the cases should be consolidated for trial, but agree that the issue should be raised again following the completion of discovery.

In addition to the *Webb* case, there are two other heat-related cases pending in the Eastern District at this time: *Adams, et al. v. Livingston, et al.*, No. 6:13cv712 and *Togonidze v. Livingston, et al.*, No. 6:14cv93. All three are pending in the Tyler Division of this District.

Federal Rule of Civil Procedure 42(a) provides that if actions “involve a common question of law or fact,” the court may

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

Fed. R. Civ. P. 42(a). Consolidation does not merge the suits into a single action or change the rights of the parties; rather, it is a procedure to promote judicial economy and “actions maintain their separate identity even if consolidated.” *Frazier v. Garrison I.S.D.*, 980 F.2d 1514, 1532 (5th Cir. 1993).

The decision to consolidate actions under Rule 42(a) is “entirely within the discretion of the district court as it seeks to promote the administration of justice.” *Gentry v. Smith*, 487 F.2d 571, 581 (5th Cir. 1973) (citations omitted); *see also Luera v. M/V Alberta*, 635 F.3d 181, 194 (5th Cir. 2011).

Other than the identities of the individual decedents in these three cases and the specifics of their circumstances and locations, there are many similarities and common issues between the cases. The parties in the Joint Recommendation have already agreed that deposition and written discovery will be shared among the cases, subject to evidentiary objections at trial and protective orders. The Court finds that consolidation is warranted among these three cases. At present, the Court will limit consolidation to discovery and pre-trial matters such as scheduling. When discovery is completed, the issue of consolidation for trial will be re-opened for discussion.

The parties have also requested that a Joint Scheduling Conference be convened at the earliest opportunity to allow depositions beginning April 9, 2014, to proceed. Accordingly, the Court hereby sets a Joint Scheduling Conference for the three cases to be conducted in the Courtroom of the undersigned at the Federal Courthouse in Tyler, Texas, at 1:30 p.m. on April 7, 2014. In addition to scheduling issues, additional topics to be addressed will include (1) the filing and handling of dispositive motions prior to trial; (2) management of “Executive Defendant” claims in which discovery is limited to the issue of qualified immunity, management of non-“Executive Defendant” claims, and management of Americans with Disabilities Act, Americans with Disabilities Act Amendment Act and Rehabilitation Act claims against UTMB and TDCJ; and (3) Plaintiff’s Emergency Motion to Compel Responses to Requests for Production from Defendant University of Texas Medical Branch,¹ which was filed in *Webb*, No.

¹ The Joint Recommendation states that depositions will start on April 9, 2014, but the Emergency Motion suggests that the first deposition is set for April 14, 2014. Emerg. Mot. at 2.

6:13cv711, on March 31, 2014 at docket entry #87; if Defendants have a response to that motion, they shall file it by April 3, 2014. Additionally, the parties shall file their proposed scheduling order, as discussed in the Joint Recommendation at 5, by April 3, 2014.

It is accordingly

ORDERED that the cases *Webb v. Livingston, et al.*, No. 6:13cv711 (E.D. Tex.); *Adams, et al. v. Livingston, et al.*, No. 6:13cv712 (E.D. Tex.) and *Togonidze v. Livingston, et al.*, No. 6:14cv93 (E.D. Tex.) are hereby consolidated for discovery and scheduling consistent with the parameters outlined herein. Filings in the consolidated action should be made to the *Webb* case and the caption will contain all three case numbers. The Clerk shall enter this Order in all three cases. It is further

ORDERED that a Joint Scheduling Conference is set in the Courtroom of the undersigned at the Federal Courthouse in Tyler, Texas, at 1:30 p.m. on Monday, April 7, 2014. The parties' Motion for a Scheduling Conference contained in the Joint Recommendation (docket entry #86) is accordingly **GRANTED**. Topics to be addressed in addition to scheduling matters are outlined above. If the parties have additional issues to discuss, they should submit them as part of their proposed scheduling order. It is finally

ORDERED that the parties shall submit their proposed scheduling order by April 3, 2014; further, that the Defendants shall file their response, if any, to Plaintiff's Emergency Motion to Compel Responses to Requests for Production from Defendant UTMB (*Webb* docket entry #87) by April 3, 2014, in order to take the motion up at the Joint Scheduling Conference.

So ORDERED and SIGNED this 1st day of April, 2014.